IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 45 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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PUSHPADEVI,WD/O DECD.ISHWARLALTARACHAND SHARMA & 4 - Applicant(s)
Versus
NATHABHAI BHURABHAI MOLIYA & 3 - Opponent(s)

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Appearance :

MS NISHA M THAKORE for Applicant(s) : 1 - 5.
NOTICE UNSERVED for Opponent(s) : 1, 3,
MR GC MAZMUDAR for Opponent(s) : 2,
MR HG MAZMUDAR for Opponent(s) : 2,
NOTICE SERVED BY DS for Opponent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 27/07/2006

ORAL JUDGMENT

1. By filing instant petition under Section 115 of the Code of Civil Procedure, Petitioners, who are the claimants of MACP No. 348 of 1999, in whose favour award of Rs.3,90,000/- together with interest @ 8% has been made, challenge the order dated 15.9.2005 recorded below application exh. 75 in MACP No. 348 of 1999 by the MACT (Aux.) Court No.8, City Civil Court, Ahmedabad, by which the application filed by the Petitioners to disburse and release 30% amount from the awarded amount in favour of the

Petitioner No.1, who is the guardian of Petitioner Nos. 2 to 4, has been rejected.

2. The Petitioners, who are the claimants have filed MACP No. 348 of 1999 before the MACT (Aux.) Court No.8, City Civil Court, Ahmedabad for receiving compensation on account of untimely demise of Ishwarlal Tarachand Sharma, who died in a vehicular accident, which has taken place on 16.8.1998. Petitioner No. 1 is the widow of deceased Ishwarlal Tarachand Sharma whereas Petitioner Nos. 2 to 4 are minor sons and daughters of the deceased Ishwarlal Tarachand Sharma. The MACT (Aux.), Court No.8, City Civil Court, Ahmedbaad, on adjudication of the claim made by the Petitioners vide award dated 5.7.2005 awarded Rs.3,90,000/- together with 8% interest from the date of the petition till the amount is realized, from Respondent No.2 – The United India Insurance Company Ltd.. While passing the award, the Tribunal has also apportioned the amount of compensation amongst the Petitioner / claimants in the ratio of 40:20:20:20. The order further stipulates that the entire amount falling under the share of petitioner No.1 shall be deposited in long term fixed deposit for the period of 5 years with any nationalized bank of her choice and similarly the entire amount falling in the share of Petitioner Nos. 2 to 4, who are minors, shall be deposited in long term fixed deposit till they attain majority with any nationalized bank of

Petitioner No.1's choice.

3. On depositing the amount by Respondent No.2 – United India Insurance Company Ltd., the Petitioner No.1 filed application exh.75 for releasing 30% amount in her favour. The said application has been rejected by the Tribunal by holding that the Petitioner sought review of the award by which the entire awarded amount was ordered to be invested in a long term fixed deposit.

4. This Court has considered the submissions advanced by Ms. Nisha Thakore, learned advocate of the Petitioners and Mr. G.C.Majmudar, learned advocate for Respondent No.2 – United India Insurance Company Limited, perused the impugned judgement and order and dated 5.7.2005 rendered in MACT No. 348 of 1999 by the learned MACT(Aux.) Court No.8, City Civil Court, Ahmedabad, and also the order dated 15.9.2005, which is impugned in this petition.

5. According to this Court, Petitioner No.1 is a widow of deceased Ishwarlal Tarachand Sharma whereas the Petitioner Nos. 2 to 4 are the minor sons and daughter, therefore, so far as the amount apportioned in favour of Petitioner Nos. 2 to 4 in the ratio of 20% each is concerned, since they are minor, no amount can be disbursed, released and paid in their favour, whereas so far as Petitioner No.1 is concerned, if no amount is disbursed in her favour, then it would be difficult for her to maintain the minor

children and to pull the house.

6. It is settled principle of law of compensation by catena of decisions of Supreme Court as well as this Court that some amount is required to be disbursed and released by paying in cash in favour of the victim of the road accident. In the instant case, the Tribunal has not awarded a single farthing in favour of the victim of the road accident, who are the Petitioners, therefore, if the amount of 30% from the share of Petitioner No.1 is disbursed and released to her in cash, the same would meet the ends of justice.

7. Seen in the above context, this petition deserves to be allowed by granting the prayer made in application exh.75 in MACP No. 348 of 1999.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 15.9.2005 recorded below application exh. 75 by the MACT (Aux.) Court No.8, City Civil Court, Ahmedabad is quashed and set aside, result of which is that application exh.75 is allowed. MACT (Aux.) Court No.8, City Civil Court, Ahmedabad is directed to disburse and release 30% amount from the share of Petitioner No.1 by giving Account Payee Cheque in favour of petitioner No.1.

Rule is made absolute.

(A.M.Kapadia,J)

Jayanti*